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H.B. No. 1735

A BILL TO BE ENTITLED

AN ACT

relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 51, Education Code, is amended by adding Subchapter E-3 to read as follows:

SUBCHAPTER E-3. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.281. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Dating violence," "sexual assault," and "stalking" have the meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)(6)(A)).

(3) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003.

(4) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.

(5) "Sexual harassment" means unwelcome, sex-based

1 verbal or physical conduct that:

2 (A) in the employment context, unreasonably  
3 interferes with a person's work performance or creates an  
4 intimidating, hostile, or offensive work environment; or

5 (B) in the education context, is sufficiently  
6 severe, persistent, or pervasive that the conduct interferes with a  
7 student's ability to participate in or benefit from educational  
8 programs or activities at a postsecondary educational institution.

9 Sec. 51.282. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,  
10 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational  
11 institution shall adopt a policy on sexual harassment, sexual  
12 assault, dating violence, and stalking applicable to each student  
13 enrolled at and each employee of the institution. The policy must:

14 (1) include:

15 (A) definitions of prohibited behavior;

16 (B) sanctions for violations;

17 (C) the protocol for reporting and responding to  
18 reports of sexual harassment, sexual assault, dating violence, and  
19 stalking;

20 (D) interim measures to protect victims of sexual  
21 harassment, sexual assault, dating violence, or stalking during the  
22 pendency of the institution's disciplinary process, including  
23 protection from retaliation, and any other accommodations  
24 available to those victims at the institution; and

25 (E) a statement regarding:

26 (i) the importance of a victim of sexual  
27 harassment, sexual assault, dating violence, or stalking going to a

1 hospital for treatment and preservation of evidence, if applicable,  
2 as soon as practicable after the incident;

3 (ii) the right of a victim of sexual  
4 harassment, sexual assault, dating violence, or stalking to report  
5 the incident to the institution and to receive a prompt and  
6 equitable resolution of the report; and

7 (iii) the right of a victim of a crime to  
8 choose whether to report the crime to law enforcement, to be  
9 assisted by the institution in reporting the crime to law  
10 enforcement, or to decline to report the crime to law enforcement;  
11 and

12 (2) be approved by the institution's governing board  
13 before final adoption by the institution.

14 (b) Each postsecondary educational institution shall make  
15 the institution's sexual harassment, sexual assault, dating  
16 violence, and stalking policy available to students, faculty, and  
17 staff members by:

18 (1) including the policy in the institution's student  
19 handbook and personnel handbook; and

20 (2) creating and maintaining a web page dedicated  
21 solely to the policy that is easily accessible through a clearly  
22 identifiable link on the institution's Internet website home page.

23 (c) Each postsecondary educational institution shall  
24 require each entering freshman or undergraduate transfer student to  
25 attend an orientation on the institution's sexual harassment,  
26 sexual assault, dating violence, and stalking policy before or  
27 during the first semester or term in which the student is enrolled

1 at the institution. The institution shall establish the format and  
2 content of the orientation. The orientation:

3 (1) may be provided online; and

4 (2) must include the statements described by  
5 Subsection (a)(1)(E).

6 (d) Each postsecondary educational institution shall  
7 develop and implement a comprehensive prevention and outreach  
8 program on sexual harassment, sexual assault, dating violence, and  
9 stalking. The program must:

10 (1) address a range of strategies to prevent sexual  
11 harassment, sexual assault, dating violence, and stalking,  
12 including a victim empowerment program, a public awareness  
13 campaign, primary prevention, bystander intervention, and risk  
14 reduction; and

15 (2) include providing to students information  
16 regarding the protocol for reporting incidents of sexual  
17 harassment, sexual assault, dating violence, and stalking adopted  
18 under Subsection (a), including the name, office location, and  
19 contact information of the institution's Title IX coordinator, by:

20 (A) e-mailing the information to each student at  
21 the beginning of each semester or other academic term; and

22 (B) including the information in the orientation  
23 required under Subsection (c).

24 (e) As part of the protocol for responding to reports of  
25 sexual harassment, sexual assault, dating violence, and stalking  
26 adopted under Subsection (a), each postsecondary educational  
27 institution shall:

1           (1) to the greatest extent practicable based on the  
2 number of counselors employed by the institution, ensure that each  
3 alleged victim or alleged perpetrator of an incident of sexual  
4 harassment, sexual assault, dating violence, or stalking and any  
5 other person who reports such an incident are offered counseling  
6 provided by a counselor who does not provide counseling to any other  
7 person involved in the incident; and

8           (2) notwithstanding any other law, allow an alleged  
9 victim or alleged perpetrator of an incident of sexual harassment,  
10 sexual assault, dating violence, or stalking to drop a course in  
11 which both parties are enrolled without any academic penalty.

12           (f) Each biennium, each postsecondary educational  
13 institution shall review the institution's sexual harassment,  
14 sexual assault, dating violence, and stalking policy and, with  
15 approval of the institution's governing board, revise the policy as  
16 necessary.

17           Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an  
18 alleged victim of an incident of sexual harassment, sexual assault,  
19 dating violence, or stalking reported to a postsecondary  
20 educational institution requests the institution not to  
21 investigate the alleged incident, the institution may investigate  
22 the alleged incident in a manner that complies with the  
23 confidentiality requirements under Section 51.291. In determining  
24 whether to investigate the alleged incident, the institution shall  
25 consider:

26           (1) the seriousness of the alleged incident;

27           (2) whether the institution has received other reports

1 of sexual harassment, sexual assault, dating violence, or stalking  
2 committed by the alleged perpetrator or perpetrators;

3 (3) whether the alleged incident poses a risk of harm  
4 to others; and

5 (4) any other factors the institution determines  
6 relevant.

7 (b) If a postsecondary educational institution decides not  
8 to investigate an alleged incident of sexual harassment, sexual  
9 assault, dating violence, or stalking based on the alleged victim's  
10 request not to investigate, the institution shall take any steps  
11 the institution determines necessary to protect the health and  
12 safety of the institution's community in relation to the alleged  
13 incident.

14 (c) A postsecondary educational institution shall inform an  
15 alleged victim of an incident of sexual harassment, sexual assault,  
16 dating violence, or stalking who requests the institution not to  
17 investigate the alleged incident of the institution's decision  
18 whether to investigate the alleged incident.

19 Sec. 51.286. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.  
20 A postsecondary educational institution that initiates a  
21 disciplinary process concerning an allegation that a student  
22 enrolled at the institution violated the institution's code of  
23 conduct by committing sexual harassment, sexual assault, dating  
24 violence, or stalking shall:

25 (1) provide to the student and the alleged victim a  
26 prompt and equitable opportunity to present witnesses and other  
27 evidence relevant to the alleged violation during the disciplinary

1 process;

2 (2) ensure that both the student and the alleged  
3 victim have reasonable and equitable access to all evidence  
4 relevant to the alleged violation in the institution's possession,  
5 including any statements made by the alleged victim or by other  
6 persons, information stored electronically, written or electronic  
7 communications, social media posts, or physical evidence, redacted  
8 as necessary to comply with any applicable federal or state law  
9 regarding confidentiality; and

10 (3) take reasonable steps to protect the student and  
11 the alleged victim from retaliation and harassment during the  
12 pendency of the disciplinary process.

13 Sec. 51.287. STUDENT WITHDRAWAL OR GRADUATION PENDING  
14 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from  
15 a postsecondary educational institution pending a disciplinary  
16 charge alleging that the student violated the institution's code of  
17 conduct by committing sexual harassment, sexual assault, dating  
18 violence, or stalking, the institution:

19 (1) may not end the disciplinary process or issue a  
20 transcript to the student until the institution makes a final  
21 determination of responsibility; and

22 (2) shall expedite the institution's disciplinary  
23 process as necessary to accommodate both the student's and the  
24 alleged victim's interest in a speedy resolution.

25 (b) On request by another postsecondary educational  
26 institution, a postsecondary educational institution shall provide  
27 to the requesting institution information relating to a

1 determination by the institution that a student enrolled at the  
2 institution violated the institution's code of conduct by  
3 committing sexual harassment, sexual assault, dating violence, or  
4 stalking.

5 Sec. 51.288. TRAUMA-INFORMED INVESTIGATION TRAINING. Each  
6 peace officer employed by a postsecondary educational institution  
7 shall complete training on trauma-informed investigation into  
8 allegations of sexual harassment, sexual assault, dating violence,  
9 and stalking.

10 Sec. 51.289. MEMORANDA OF UNDERSTANDING REQUIRED. To  
11 facilitate effective communication and coordination regarding  
12 allegations of sexual harassment, sexual assault, dating violence,  
13 and stalking at the institution, a postsecondary educational  
14 institution shall enter into a memorandum of understanding with one  
15 or more:

- 16 (1) local law enforcement agencies;  
17 (2) sexual harassment, sexual assault, dating  
18 violence, or stalking advocacy groups; and  
19 (3) hospitals or other medical resource providers.

20 Sec. 51.290. RESPONSIBLE AND CONFIDENTIAL EMPLOYEE;  
21 STUDENT ADVOCATE. (a) Each postsecondary educational institution  
22 shall:

- 23 (1) designate:  
24 (A) one or more employees to act as responsible  
25 employees for purposes of Title IX of the Education Amendments of  
26 1972 (20 U.S.C. Section 1681 et seq.); and  
27 (B) one or more employees as persons to whom

1 students enrolled at the institution may speak confidentially  
2 concerning sexual harassment, sexual assault, dating violence, and  
3 stalking; and

4 (2) inform each student enrolled at the institution of  
5 the responsible and confidential employees designated under  
6 Subdivision (1).

7 (b) A postsecondary educational institution may designate  
8 one or more students enrolled at the institution as student  
9 advocates to whom other students enrolled at the institution may  
10 speak confidentially concerning sexual harassment, sexual assault,  
11 dating violence, and stalking. The institution shall notify each  
12 student enrolled at the institution of the student advocates  
13 designated under this subsection.

14 (c) A confidential employee designated under Subsection  
15 (a)(1)(B) or a student advocate designated under Subsection (b) may  
16 not disclose any communication made by a student to the employee or  
17 advocate unless the student consents to the disclosure or the  
18 employee or advocate is required to make the disclosure under state  
19 or federal law.

20 Sec. 51.291. CONFIDENTIALITY. (a) The protections  
21 provided by this section apply to:

22 (1) an alleged victim of an incident of sexual  
23 harassment, sexual assault, dating violence, or stalking reported  
24 to a postsecondary educational institution;

25 (2) a person who reports to a postsecondary  
26 educational institution an incident of sexual harassment, sexual  
27 assault, dating violence, or stalking, who sought guidance from the

1 institution concerning such an incident, or who participated in the  
2 institution's investigation of such an incident; and

3 (3) a person who is alleged in a report made to a  
4 postsecondary educational institution to have committed or  
5 assisted in the commission of sexual harassment, sexual assault,  
6 dating violence, or stalking if, after completing an investigation,  
7 the institution determines the report to be unsubstantiated or  
8 without merit.

9 (b) Unless waived in writing by the person, the identity of  
10 a person described by Subsection (a):

11 (1) is confidential and not subject to disclosure  
12 under Chapter 552, Government Code; and

13 (2) may be disclosed only to:

14 (A) the postsecondary educational institution to  
15 which the report described by Subsection (a) is made as necessary to  
16 conduct an investigation of the report;

17 (B) a law enforcement officer as necessary to  
18 conduct a criminal investigation of the report described by  
19 Subsection (a); or

20 (C) a health care provider in an emergency  
21 situation, as determined necessary by the institution.

22 (c) A disclosure under Subsection (b) is not a voluntary  
23 disclosure for purposes of Section 552.007, Government Code.

24 (d) Information regarding an incident of sexual harassment,  
25 sexual assault, dating violence, or stalking disclosed to a health  
26 care provider or other medical provider employed by a postsecondary  
27 educational institution is confidential and may be shared by the

1 provider only with the victim's consent. The provider must provide  
2 aggregate data or other nonidentifying information regarding those  
3 incidents to the institution's Title IX coordinator.

4 Sec. 51.292. COMPLIANCE. (a) If the coordinating board  
5 determines that an institution of higher education is not in  
6 substantial compliance with this subchapter, the coordinating  
7 board shall report that determination to the legislature for  
8 consideration of whether to reduce the allocation of state funding  
9 to the institution for the following academic year.

10 (b) If the coordinating board determines that a private or  
11 independent institution of higher education is not in substantial  
12 compliance with this subchapter, the coordinating board may assess  
13 an administrative penalty against the institution in an amount not  
14 to exceed the amount of funding received by students enrolled at the  
15 institution from tuition equalization grants under Subchapter F,  
16 Chapter 61, for the preceding academic year or \$2 million,  
17 whichever is greater. In determining the amount of the penalty, the  
18 coordinating board shall consider the nature of the violation and  
19 the number of students enrolled at the institution.

20 (c) If the coordinating board takes an action under  
21 Subsection (a) or (b) against a postsecondary educational  
22 institution, the coordinating board shall provide to the  
23 institution written notice of the coordinating board's reasons for  
24 taking the action.

25 (d) A postsecondary educational institution against which  
26 the coordinating board takes an action under Subsection (a) or (b),  
27 as applicable, may appeal the action taken in the manner provided by

1 Chapter 2001, Government Code.

2 (e) A private or independent institution of higher  
3 education may not pay an administrative penalty assessed under  
4 Subsection (b) using state or federal money.

5 (f) An administrative penalty collected under this section  
6 shall be deposited to the credit of the sexual assault program fund  
7 established under Section 420.008, Government Code.

8 Sec. 51.293. EQUAL ACCESS. In implementing the  
9 requirements under this subchapter, a postsecondary educational  
10 institution shall, to the greatest extent practicable, ensure equal  
11 access for students enrolled at or employees of the institution who  
12 are persons with disabilities. The institution shall make  
13 reasonable efforts to consult with a disability services office of  
14 the institution, advocacy groups for people with disabilities, and  
15 other relevant stakeholders to assist the institution with  
16 complying with the institution's duties under this section.

17 Sec. 51.294. ADVISORY COMMITTEE. (a) The commissioner of  
18 higher education shall establish an advisory committee to:

19 (1) make recommendations to the coordinating board  
20 regarding rules for adoption under Section 51.295; and

21 (2) develop recommended training for responsible and  
22 confidential employees designated under Section 51.290 and for  
23 Title IX coordinators at postsecondary educational institutions.

24 (b) The advisory committee consists of nine members  
25 appointed by the commissioner of higher education. Each member  
26 must be a chief executive officer of a postsecondary educational  
27 institution or a representative designated by that officer.

1        (c) The advisory committee shall annually review and, if  
2 necessary, update the training recommended under Subsection  
3 (a)(2).

4        Sec. 51.295. RULES. (a) The coordinating board shall adopt  
5 rules as necessary to implement and enforce this subchapter,  
6 including rules that:

7            (1) define relevant terms; and

8            (2) ensure implementation of this subchapter in a  
9 manner that complies with federal law regarding confidentiality of  
10 student educational information, including the Family Educational  
11 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

12        (b) In adopting rules under this section, the coordinating  
13 board shall consult with relevant stakeholders.

14        SECTION 2. Sections 51.9365(b), (c), and (d), Education  
15 Code, are transferred to Subchapter E-3, Chapter 51, Education  
16 Code, as added by this Act, redesignated as Section 51.283,  
17 Education Code, and amended to read as follows:

18        Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [~~b~~] Each  
19 postsecondary educational institution shall provide an option for a  
20 student enrolled at or an employee of the institution to  
21 electronically report to the institution an allegation of sexual  
22 harassment, sexual assault, dating violence, or stalking committed  
23 against or witnessed by the student or employee, regardless of the  
24 location at which the alleged offense occurred.

25        (b) [~~c~~] The electronic reporting option provided under  
26 Subsection (a) [~~b~~] must:

27            (1) enable a student or employee to report the alleged

1 offense anonymously; and

2 (2) be easily accessible through a clearly  
3 identifiable link on the postsecondary educational institution's  
4 Internet website home page.

5 (c) [~~(d)~~] A protocol for reporting sexual assault adopted  
6 under Section 51.282 [~~51.9363~~] must comply with this section.

7 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),  
8 Education Code, are transferred to Subchapter E-3, Chapter 51,  
9 Education Code, as added by this Act, redesignated as Section  
10 51.284, Education Code, and amended to read as follows:

11 Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN  
12 INCIDENTS. (a) [~~(b)~~] A postsecondary educational institution may  
13 not take any disciplinary action against a student enrolled at the  
14 institution who in good faith reports to the institution being the  
15 victim of, or a witness to, an incident of sexual harassment, sexual  
16 assault, dating violence, or stalking for a violation by the  
17 student of the institution's code of conduct occurring at or near  
18 the time of the incident, regardless of the location at which the  
19 incident occurred or the outcome of the institution's disciplinary  
20 process regarding the incident, if any.

21 (b) [~~(c)~~] A postsecondary educational institution may  
22 investigate to determine whether a report of an incident of sexual  
23 harassment, sexual assault, dating violence, or stalking was made  
24 in good faith.

25 (c) [~~(d)~~] A determination that a student is entitled to  
26 amnesty under Subsection (a) [~~(b)~~] is final and may not be revoked.

27 (d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student

1 who reports the student's own commission or assistance in the  
2 commission of sexual harassment, sexual assault, dating violence,  
3 or stalking.

4 (e) [~~(f)~~] This section may not be construed to limit a  
5 postsecondary educational institution's ability to provide amnesty  
6 from application of the institution's policies in circumstances not  
7 described by Subsection (a) [~~(b)~~].

8 SECTION 4. The following provisions of the Education Code  
9 are repealed:

- 10 (1) Section 51.9363;
- 11 (2) the heading to Sections 51.9365 and 51.9366;
- 12 (3) Sections 51.9365(a) and (e); and
- 13 (4) Sections 51.9366(a) and (g).

14 SECTION 5. The changes in law made by this Act apply  
15 beginning August 1, 2020.

16 SECTION 6. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2019.